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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92032341
Party	Defendant MICHEL FARAH
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Date	06/06/2006
Attachments	Supplement Motion to suspend 060606.pdf (3 pages)(22258 bytes) Answer Counterclaim.pdf (25 pages)(883828 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRAMIL S.R.L. (ESAPHARMA),)	Cancellation No. 92032341
)	Registration No. 2,447,970
Petitioner,)	Mark: OMIC PLUS
)	
v.)	
)	
MICHEL FARAH,)	
)	
Registrant.)	
)	

REGISTRANT'S FIRST SUPPLEMENT TO
MOTION TO SUSPEND PROCEEDING

On May 13, 2006, Registrant filed his motion to suspend this proceeding, based upon the pendency of a civil action that involves the subject mark.(D.E. 43). The Board has not yet ruled on the motion. Registrant now supplements his motion to advise the Board of further developments in the civil action.

In response to the motion to suspend, Petitioner argued that “there is no showing that a result in the civil action will have a bearing on the issues before the Board,” and asserted that “[i]t is impossible for the Board to ascertain, prior to the filing of an answer in the civil action, whether the final determination of that proceeding will have a bearing on the issues before the Board.” (D.E. 45).¹ One of the defendants in the civil action, International Beauty Exchange, Inc. (“IBE”), the U.S. distributor for Petitioner, has now filed its answer to the complaint and has asserted a counterclaim.

¹ Other arguments asserted by Petitioner were addressed in Registrant’s reply, filed April 4, 2006. (D.E. 46). (Petitioner’s reply is incorrectly docketed as “D’s Opposition/Response to Motion.”).

Attached to this Supplement is a copy of the answer, affirmative defenses and counterclaim filed in the civil action by IBE on June 2, 2006. In its answer, IBE repeatedly asserts that the plaintiff, Gapardis Health and Beauty, Inc., the exclusive licensee of Registrant, has no rights to the OMIC PLUS trademark. (Answer, ¶¶ 8, 16, 17, 18). In its counterclaim, IBE alleges that it is the owner of the OMIC PLUS trademark (Counterclaim, ¶ 7),² and asserts claims of counterfeiting, infringement, false designation of origin, dilution, unfair competition, and unfair and deceptive trade practice against Registrant's exclusive licensee for its use of "the IBE Marks," including OMIC PLUS. (Counterclaim, Counts I through V). Thus, it is clear that the issues being litigated will have a significant bearing on the issues before the Board in this proceeding, and this proceeding should be suspended pending the resolution of the civil action.

Respectfully submitted,

/s/David M. Rogero/
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Attorney for Registrant Michel Farah

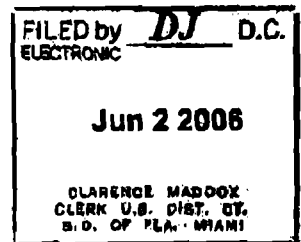
² IBE's assertion of ownership of the OMIC PLUS mark is seemingly contrary to the claims of Petitioner made in this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Suspend Proceeding was sent by first class mail with proper postage affixed, the 6th day of June, 2006, to the following counsel for petitioner:

Donald L. Dennison
Dennison, Schultz, Dougherty
1727 King Street, Suite 105
Alexandria, VA 22314

/s/David M. Rogero/



IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

GAPARDIS HEALTH AND BEAUTY, INC.,

Plaintiff,

CASE NO. 06-20619 CIV-MORENO
Magistrate Judge Simonton

v.

PRAMIL S.R.L. (ESAPHARMA) and
INTERNATIONAL BEAUTY EXCHANGE,
INC.,

Defendants.

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Defendant, INTERNATIONAL BEAUTY EXCHANGE, INC. ("IBE"), by and through undersigned counsel, hereby files its Answer, Affirmative Defenses and Counterclaim as follows:

ANSWER

I. The Nature of the Action

1. IBE admits the allegations set forth in paragraph 1 of Plaintiff's Complaint for jurisdictional purposes only.

II. The Parties

2. IBE admits the allegations in paragraph 2 of Plaintiff's Complaint.

3. IBE is without knowledge sufficient to either admit or deny the allegations in paragraph 3 of Plaintiff's Complaint.

4. IBE admits the allegation in paragraph 4 of Plaintiff's Complaint.

III. Jurisdiction and Venue

5. IBE admits the allegations in paragraph 5 of Plaintiff's Complaint.

6. IBE admits the allegations in paragraph 6 of Plaintiff's Complaint for jurisdictional purposes only but denies it distributes any infringing or counterfeit products.

7. IBE admits the allegations in paragraph 7 of Plaintiff's Complaint.

8. IBE admits the allegations in paragraph 8 of Plaintiff's Complaint but denies that Plaintiff possesses any rights to the REGGE LEMON and OMIC PLUS trademarks. Moreover, IBE is without knowledge sufficient to either admit or deny that Plaintiff possesses any rights to the CAROTIS, PRECIOUS, IKB and LEXUS OF ENGLAND trademarks.

9. IBE is without knowledge sufficient to either admit or deny the allegations set forth in Paragraph 9 of Plaintiff's Complaint.

10. IBE denies the allegations set forth in Paragraph 10 of Plaintiff's Complaint.

11. IBE is without knowledge sufficient to either admit or deny the allegations set forth in Paragraph 11 of Plaintiff's Complaint.

12. IBE is without knowledge sufficient to either admit or deny the allegations set forth in Paragraph 12 of Plaintiff's Complaint.

13. IBE denies the allegations set forth in Paragraph 13 of Plaintiff's Complaint.

14. IBE is without knowledge sufficient to either admit or deny the allegations set forth in Paragraph 14 of Plaintiff's Complaint.

15. IBE denies the allegations set forth in Paragraph 15 of Plaintiff's Complaint regarding the REGGE LEMON and OMIC PLUS trademarks inasmuch as Plaintiff has no rights to those marks or their related trade dress. IBE is without knowledge sufficient to either admit or deny the allegations regarding the CAROTIS, PRECIOUS, IKB and LEXUS OF ENGLAND trademarks.

16. IBE admits the allegations set forth in Paragraph 16 of Plaintiff's Complaint that Plaintiff actively markets and promotes products bearing the REGGE LEMON and OMIC PLUS trademarks, however, IBE denies Plaintiff has any right to do so. IBE is without knowledge sufficient to either admit or deny the allegations regarding the CAROTIS, PRECIOUS, IKB and LEXUS OF ENGLAND trademarks.

17. IBE admits the allegations set forth in Paragraph 17 of Plaintiff's Complaint that IBE's products bearing the REGGE LEMON and OMIC PLUS trademarks and trade dress are known by consumers to be of the highest quality. IBE denies this is true of Plaintiff's infringing and counterfeit products wrongfully bearing those marks and trade dress. Moreover, IBE denies Plaintiff has any rights to those trademarks, therefore, while their value to Plaintiff may be inestimable it is wrongful. IBE is without knowledge sufficient to either admit or deny the allegations regarding the CAROTIS, PRECIOUS, IKB and LEXUS OF ENGLAND trademarks.

18. IBE admits the allegations set forth in Paragraph 18 of Plaintiff's Complaint that Plaintiff has engaged in substantial sales of products bearing the REGGE LEMON and OMIC PLUS trademarks. IBE denies Plaintiff has any right to do so. IBE is without knowledge sufficient to either admit or deny the allegations regarding the CAROTIS, PRECIOUS, IKB and LEXUS OF ENGLAND trademarks.

19. IBE admits only the allegation in Paragraph 19 of Plaintiff's Complaint that IBE entered into a contract captioned: Global Settlement Agreement (the "GSA"). IBE denies that it was not a party to any of the litigation which was settled by the referenced GSA. Because the GSA speaks for itself, IBE denies Plaintiff's paraphrasing of the GSA in Paragraphs 19(A) and (B).

V. The Defendants' Scheme

20. IBE denies the allegations set forth in Paragraph 20 of Plaintiff's Complaint.

21. IBE denies the allegations set forth in Paragraph 21 of Plaintiff's Complaint.

22. IBE admits the allegations set forth in Paragraph 22 of Plaintiff's Complaint that Defendant PRAMIL S.R.L. (ESAPHARMA) filed a successful opposition to Mitchell Cosmetics SARL's USPTO application to register the REGGE LEMON mark. IBE denies the remainder of Plaintiff's allegations.

23. IBE denies the allegation in Paragraph 23 of Plaintiff's Complaint that it acted pursuant to any scheme with PRAMIL S.R.L. (ESAPHARMA). IBE admits Plaintiff's remaining allegations.

24. IBE denies the allegation in Paragraph 24 of Plaintiff's Complaint that IBE acted pursuant to any scheme with PRAMIL S.R.L. (ESAPHARMA). IBE admits Plaintiff's remaining allegations.

25. IBE denies the allegation in Paragraph 25 of Plaintiff's Complaint that IBE acted pursuant to any scheme with PRAMIL S.R.L. (ESAPHARMA). IBE admits Plaintiff's remaining allegations.

26. IBE denies the allegation in Paragraph 26 of Plaintiff's Complaint that IBE acted pursuant to any scheme with PRAMIL S.R.L. (ESAPHARMA). IBE admits Plaintiff's remaining allegations.

27. IBE denies the allegation in Paragraph 27 of Plaintiff's Complaint that IBE acted pursuant to any scheme with PRAMIL S.R.L. (ESAPHARMA). IBE admits that IBE registered the PRECIOUS BEAUTY mark. IBE denies Plaintiff's remaining allegations.

28. IBE denies the allegations in Paragraph 28 of Plaintiff's Complaint.

29. IBE denies the allegations in Paragraph 29, (i), (ii), (iii) and (iv) of Plaintiff's Complaint.

COUNT I

30. IBE adopts and realleges its answers to the allegations set forth in Paragraphs 1 through 29 of Plaintiff's Complaint as if fully set forth herein.

31. IBE denies the allegations in Paragraph 31 of Plaintiff's Complaint.

32. IBE denies the allegations in Paragraph 32 of Plaintiff's Complaint.

COUNT II

33. IBE adopts and realleges its answers to the allegations set forth in Paragraphs 1 through 29 of Plaintiff's Complaint as if fully set forth herein.

34. IBE denies the allegations in Paragraph 34 of Plaintiff's Complaint.

35. IBE denies the allegations in Paragraph 35 of Plaintiff's Complaint.

COUNT III

36. IBE adopts and realleges its answers to the allegations set forth in Paragraphs 1 through 29 of Plaintiff's Complaint as if fully set forth herein.

37. IBE denies the allegations in Paragraph 37 of Plaintiff's Complaint.

38. IBE denies the allegations in Paragraph 38 of Plaintiff's Complaint.

COUNT IV

39. IBE adopts and realleges its answers to the allegations set forth in Paragraphs 1 through 29 of Plaintiff's Complaint as if fully set forth herein.

40. IBE denies the allegations in Paragraph 40 of Plaintiff's Complaint.

41. IBE denies the allegations in Paragraph 41 of Plaintiff's Complaint.

COUNT V

42. IBE adopts and realleges its answers to the allegations set forth in Paragraphs 1 through 29 of Plaintiff's Complaint as if fully set forth herein.

43. IBE denies the allegations in Paragraph 43 of Plaintiff's Complaint.

44. IBE denies the allegations in Paragraph 44 of Plaintiff's Complaint.

COUNT VI

45. IBE adopts and realleges its answers to the allegations set forth in Paragraphs 1 through 29 of Plaintiff's Complaint as if fully set forth herein.

46. IBE denies the allegations in Paragraph 46 of Plaintiff's Complaint.

47. IBE denies the allegations in Paragraph 47 of Plaintiff's Complaint.

48. IBE denies the allegations in Paragraph 48 of Plaintiff's Complaint.

49. IBE denies the allegations in Paragraph 49 of Plaintiff's Complaint.

COUNT VII

50. IBE adopts and realleges its answers to the allegations set forth in Paragraphs 1 through 29 of Plaintiff's Complaint as if fully set forth herein.

51. IBE denies the allegations in Paragraph 51 of Plaintiff's Complaint.

DEFENSES

First Defense

Each count of Plaintiff's Complaint fails to state a cause of action.

Second Defense

Plaintiff's claims are barred by collateral estoppel and/or res judicata.

First Affirmative Defense

Plaintiff's claims are barred in whole or in part to the extent that IBE is entitled to a set-off and/or recoupment by virtue of its counterclaims.

Second Affirmative Defense

Plaintiff's claims are barred by the equitable doctrines of unclean hands.

Third Affirmative Defense

Plaintiff's claims are barred by waiver, laches, abandonment and/or acquiescence.

Reservation of Rights

IBE reserves the right to assert additional defenses or affirmative defenses as they may arise.

**COUNTERCLAIM FOR DAMAGES
AND INJUNCTIVE RELIEF**

Defendant/Counter-Plaintiff, INTERNATIONAL BEAUTY EXCHANGE, INC. ("IBE"), by and through undersigned counsel, hereby sues Plaintiff/Counter-Defendant, GAPARDIS HEALTH AND BEAUTY, INC. (the "Mitchell Group") as follows:

JURISDICTION AND VENUE

1. This is an action seeking to enforce 15 U.S.C. §§ 1114, 1116-1117 and 1125(a), (c). Accordingly, this Court has jurisdiction under 28 U.S.C. §§ 1331, 1338 and 1367.

2. Venue for this counterclaim is proper in this Court inasmuch as the Mitchell Group initiated this action in this District. Moreover, venue is proper pursuant to 28 U.S.C. § 1391(a) since the Mitchell Group's principal place of business is within this District, and the Mitchell Group conducts business activities within this District. Furthermore, venue is appropriate since a substantial portion of the acts giving rise to this case occurred within this District.

THE PARTIES

3. Counter-Plaintiff, IBE, is a corporation organized and existing under the laws of the State of Florida.

4. Counter-Defendant, GAPARDIS HEALTH AND BEAUTY, INC. (previously defined as the "Mitchell Group") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Miami, Florida.

ALLEGATIONS COMMON TO ALL COUNTS

5. IBE is a manufacturer and distributor of health and beauty products.

6. Plaintiff (who defines itself as the "Mitchell Group") states in its Complaint herein that it is a distributor of beauty and skin care products, including the wholesale and retail sales of such products.

7. Contrary to the Mitchell Group's allegations, it does not possess any rights to the OMIC PLUS or the REGGE LEMON marks. Instead, IBE is the owner of these marks and their related trade dress. Accordingly, IBE has filed pending applications to register these marks before the United States Patent and Trademark Office ("USPTO") under International Class 3 used in connection with the manufacture and distribution of, among other things, cosmetics, face and body cream and powders, lip gels and lipstick, body and facial soap, skin and body lotion, shampoo, conditioner, hair relaxer, deodorant, facial masks, hair colors, rouge, mascara and perfumes ("Cosmetic Products").

8. Moreover, IBE is the owner of the trademark MOVATE, which is registered with the USPTO under Registration No. 218439. IBE registered the mark on August 25, 1998 based upon its first use in commerce on May 24, 1995. The MOVATE mark is registered under International Class 3 and is also used in connection with the manufacture and distribution of Cosmetic Products.

9. The OMIC PLUS, REGGE LEMON and/or MOVATE (the "IBE Marks") trade dress (the "IBE Trade Dress") encompasses the overall look, colors, feel, symbols, and patterns used by IBE in connection with the advertisement, marketing, and sale of its genuine IBE products.

10. IBE has never assigned or licensed the IBE Marks to the Mitchell Group.

11. The IBE Marks and Trade Dress are symbols of the IBE products' quality, reputation, and goodwill and have never been abandoned.

12. Further, IBE has expended substantial time, money, and other resources developing, advertising, and otherwise promoting the IBE Marks and Trade Dress.

13. IBE has extensively used, advertised, and promoted the IBE Marks and Trade Dress in the United States in association with the sale of its Cosmetic Products.

14. As a result of the IBE's efforts, members of the consuming public readily identify merchandise bearing the IBE Marks and Trade Dress as being high quality cosmetics sponsored and approved by IBE.

15. The IBE Marks are inherently distinctive. Moreover, the IBE Marks and Trade Dress have achieved secondary meaning as an identifier of high quality Cosmetic Products.

The Mitchell Group Is Infringing IBE's Marks and Trade Dress

16. Upon information and belief, at all times relevant hereto, the Mitchell Group had full knowledge of IBE's ownership of the IBE Marks and Trade Dress, including its exclusive right to use and license the IBE Marks and Trade Dress and the goodwill associated therewith.

17. IBE has discovered that the Mitchell Group is manufacturing, promoting, and otherwise advertising, distributing, selling, and/or offering for sale counterfeit Cosmetic Products, bearing confusingly similar trademarks which are either exact copies of, or are colorable imitations of, the IBE Marks and Trade Dress (the "Counterfeit Goods").

18. Specifically, upon information and belief, the Mitchell Group is using IBE's Marks and Trade Dress in the identical, or in a confusingly similar, stylized fashion for differing goods.

19. For example, the packaging on the Mitchell Group's "LEMONVATE" products infringe on IBE's MOVATE trademark and Trade Dress. Cf., e.g., IBE's MOVATE soap green and yellow packaging, with the counterfeit LEMONVATE soap virtually identical green and

yellow packaging, copies of which are attached hereto as Composite Exhibit "A." Moreover, the Mitchell group's counterfeit soap itself is the same color, size, weight and texture as IBE's MOVATE soap and bears the confusingly similar "LEMONVATE" counterfeit mark.

20. Likewise, the packaging on the Mitchell Group's "NEOVATE" products infringe on IBE's MOVATE trademark and Trade Dress. Cf., e.g., IBE's MOVATE cream pink and turquoise packaging, with the counterfeit NEOVATE gel virtually identical pink and turquoise packaging, copies of which are attached hereto as Composite Exhibit "B." Moreover, the Mitchell group's counterfeit gel tube itself is made of the same materials, is the same color, size, and weight as IBE's MOVATE cream tube. Although NEOVATE products state they are made "under license" by "Technopharma England," on information and belief, they are in fact manufactured and/or distributed by the Mitchell Group.

21. Moreover, the Mitchell Group is disparaging IBE's products by creating an unfair comparison between IBE's genuine goods and the Mitchell Group's Counterfeit Goods. For example, the packaging on the Mitchell Group's LEMONVATE soap (which infringes on IBE's MOVATE trademark and Trade Dress) blatantly states: "BEWARE OF IMITATIONS THEY CAN SERIOUSLY DAMAGE YOUR SKIN!" See Composite Exhibit "A."

22. The Mitchell Group's wrongful conduct does not end with merely manufacturing and distributing its Counterfeit Goods. The Mitchell Group has also filed a baseless opposition to IBE's pending USPTO registration application for the REGGE LEMON mark.

23. Upon information and belief, the Mitchell Group's Counterfeit Goods are different from IBE's genuine goods. The Mitchell Group, upon information and belief, is actively manufacturing, promoting, and otherwise advertising, distributing, selling, and/or offering for sale substantial quantities of its Counterfeit Goods with the knowledge that such

goods will be mistaken for the genuine high quality products offered for sale by IBE. The net effect of the Mitchell Group's actions is to confuse consumers who will believe the Counterfeit Goods are genuine goods originating from and approved by IBE.

24. Upon information and belief, the Mitchell Group imports and/or manufactures its Counterfeit Goods and advertises those goods for sale to the consuming public. In advertising these products, the Mitchell Group uses IBE's Marks and Trade Dress.

25. Indeed, the Mitchell Group, upon information and belief, misappropriated IBE's advertising ideas and business styles with respect to IBE's genuine products.

26. The Mitchell Group's acts are the proximate cause of damage to IBE.

27. Upon information and belief, the Mitchell Group is conducting its counterfeiting activities at least within this Judicial District.

28. The Mitchell Group's infringement and disparagement of IBE's trademark rights are not simply a misdescription of their goods or a mere failure of the goods to conform to advertised quality or performance. By its activities, the Mitchell Group is defrauding IBE and the consuming public for its own benefit.

29. The Mitchell Group's use of the IBE Marks and Trade Dress, including the manufacture, importation, promotion, advertising, distribution, sale, and offering for sale of the Counterfeit Goods, is without IBE's consent or authorization.

30. Further, the Mitchell Group, upon information and belief, is engaging in the above-described illegal counterfeiting activities knowingly and intentionally, or with reckless disregard or willful blindness to IBE's rights, for the purpose of trading on the goodwill and reputation of the IBE Marks. If the Mitchell Group's counterfeiting activities are not

preliminarily and permanently enjoined by this Court, IBE and the consuming public will continue to be damaged.

31. The Mitchell Group's infringing activities described above are likely to cause confusion, deception, and mistake in the minds of consumers, the public, and the trade. Moreover, the Mitchell Group's wrongful conduct is likely to create a false impression and deceive customers, the public, and the trade into believing a connection or association exists between the IBE genuine goods and the Mitchell Group's Counterfeit Goods.

32. IBE has no adequate remedy at law.

33. IBE is suffering irreparable injury and has suffered substantial damages as a result of the Mitchell Group's counterfeiting and infringing activities.

34. The injuries and damages sustained by IBE are directly and proximately caused by the Mitchell Group's wrongful importation, advertisement, promotion, and sale of their Counterfeit Goods.

**FULFILLMENT OF CONDITIONS PRECEDENT,
ATTORNEY'S FEES AND PUNITIVE DAMAGES**

35. All conditions precedent to the filing of this action, have occurred, have been met, or have been waived.

36. IBE has retained the undersigned law firm and has agreed to pay it a reasonable fee for its services.

COUNT I - TRADEMARK COUNTERFEITING AND INFRINGEMENT

37. IBE adopts and realleges the allegations set forth in paragraphs 1 through 36 of its counterclaim as if fully set forth herein.

38. This action is for trademark counterfeiting and infringement against the Mitchell Group based on the its promotion, advertisement, distribution, sale, and/or offering for sale of the Counterfeit Goods bearing the IBE Marks or colorable imitations thereof.

39. Specifically, the Mitchell Group, upon information and belief, is importing or manufacturing, promoting, and otherwise advertising, selling, offering for sale, and distributing counterfeit and infringing Cosmetic Products.

40. The Mitchell Group is continuously infringing the IBE Marks by using them (e.g. OMIC PLUS and REGGE LEMON), or marks which are colorable imitations of them (e.g., NEOVATE and LEMONVATE), to advertise, promote, and sell counterfeit Cosmetic Products.

41. The Mitchell Group's counterfeiting activities are likely to cause and actually are causing confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of the Counterfeit Goods bearing the IBE Marks.

42. The Mitchell Group's unlawful actions have caused and are continuing to cause unquantifiable damages to IBE.

43. The Mitchell Group's above-described illegal actions constitute counterfeiting and infringement of the IBE Marks in violation of IBE's rights under § 32 of the Lanham Act, 15 U.S.C. § 1114.

44. IBE has suffered irreparable injury due to the above described activities of the Mitchell Group and IBE will continue to suffer irreparable injury if the Mitchell Group is not preliminarily and permanently enjoined.

**COUNT II - FALSE DESIGNATION OF ORIGIN
PURSUANT TO § 43(a) OF THE LANHAM ACT**

45. IBE adopts and realleges the allegations set forth in paragraphs 1 through 36 of its counterclaim as if fully set forth herein.

46. The Mitchell Group's Counterfeit Goods bearing the IBE Marks and/or Trade Dress have been widely advertised and distributed throughout the United States.

47. IBE's trade dress is not registered on the principal register but is distinctive and has acquired secondary meaning such that it is entitled to protection against the Mitchell Group's non-functional imitation trade dress which is causing confusion as to the origin, sponsorship, an/or approval of the Counterfeit Goods.

48. The Mitchell Group's Counterfeit Goods bearing the IBE Marks and/or Trade Dress are virtually identical in appearance to each of IBE's genuine goods. However, the Counterfeit Goods are of different quality. Accordingly, the Mitchell Group's activities are likely to cause confusion in the trade and among the general public as to the origin or sponsorship of the Counterfeit Goods.

49. The Mitchell Group, upon information and belief, has used in connection with its sales of the Counterfeit Goods false designations of origin and false descriptions and representations, including words or other symbols and trade dress which tend to describe or represent such goods falsely and have caused such goods to enter into commerce with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to the detriment of IBE.

50. Specifically, the Mitchell Group, upon information and belief, authorized and engaged in an infringing use of the IBE Marks and associated Trade Dress in the Mitchell Group's advertisement and promotion of their counterfeit and infringing Cosmetic Products.

51. The Mitchell Group, upon information and belief, has misrepresented to members of the consuming public that the Counterfeit Goods being advertised and sold by them are genuine, non-infringing products.

52. The Mitchell Group's above-described actions are in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

53. Plaintiff has sustained injury and damage caused by the Mitchell Group's conduct. Absent an entry of an injunction by this Court, IBE will continue to suffer irreparable injury to its goodwill and business reputation as well as monetary damages.

COUNT III - TRADEMARK DILUTION

54. IBE adopts and realleges the allegations set forth in paragraphs 1 through 36 of its counterclaim as if fully set forth herein.

55. The IBE Marks are famous trademarks within the meaning of 15 U.S.C. § 1125(c). The IBE Marks are advertised and used extensively in the ethnic market which includes the African American and Caribbean community, and are highly recognizable by the trade and the consuming public. Further, IBE actively polices the use of the IBE Marks by third parties.

56. The Mitchell Group is engaged in a commercial use of the IBE Marks in commerce.

57. The Mitchell Group's above-described counterfeiting activities are disparaging, damaging and lessening to the distinctiveness of the IBE Marks through, at least, blurring and tarnishment of said Marks. Indeed, the Mitchell Group is publishing materials in their advertising which disparage IBE's products by, at least, creating an unfair comparison between IBE's genuine goods and the Mitchell Group's Counterfeit Goods. As set forth above, the packaging on the Mitchell Group's LEMONVATE soap (which infringes on IBE's MOVATE trademark and Trade Dress) blatantly states: "BEWARE OF IMITATIONS THEY CAN SERIOUSLY DAMAGE YOUR SKIN!" See Composite Exhibit "A."

58. The Mitchell Group's actions described herein have been engaged in intentionally or with a reckless disregard for or willful blindness to IBE's rights for the purpose of trading on IBE's reputation and diluting the IBE Marks.

59. As a result of the above described diluting and disparaging activities of the Mitchell Group, the IBE has suffered, and will continue to suffer, irreparable injury and substantial damages, and the Mitchell Group has been unjustly enriched.

COUNT IV – COMMON LAW TRADEMARK INFRINGEMENT

60. IBE adopts and realleges the allegations set forth in paragraphs 1 through 36 of its counterclaim as if fully set forth herein.

61. This action is for trademark infringement against the Mitchell Group based on its manufacture, promotion, advertisement, distribution, sale, and/or offering for sale of goods bearing marks which are identical or virtually identical, both visually and phonetically, to the IBE Marks in violation of IBE's common law trademark rights.

62. Specifically, the Mitchell Group is importing or manufacturing, promoting, and otherwise advertising, selling, offering for sale, and distributing infringing Cosmetic Products.

63. The Mitchell Group's infringing activities are likely to cause and actually are causing confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of the Mitchell Group's products by their use of the IBE Marks.

64. As a result of the Mitchell Group's above described trademark infringement activities, IBE has suffered, and will continue to suffer, irreparable injury and substantial damages. The Mitchell Group has been unjustly enriched.

**COUNT V - COMMON LAW UNFAIR COMPETITION
AND UNFAIR AND DECEPTIVE TRADE PRACTICE
PURSUANT TO FLORIDA STATUTE § 501.201**

65. IBE adopts and realleges the allegations set forth in paragraphs 1 through 36 of its counterclaim as if fully set forth herein.

66. This action is for unlawful appropriation of IBE's exclusive rights in the IBE Marks and is against the Mitchell Group based on its unauthorized manufacture, promotion, advertisement, distribution, sale, and/or offering for sale of goods bearing marks which are identical or virtually identical, both visually and phonetically, to the IBE Marks in violation of Florida's common law of unfair competition.

67. Specifically, the Mitchell Group is unlawfully importing or manufacturing, promoting, and otherwise advertising, selling, offering for sale, and distributing Cosmetic Products bearing the IBE Marks.

68. The Mitchell Group's wrongful activities of unauthorized use of the IBE Marks and Trade Dress, in attempting to pass off their products as if they are IBE products in a manner calculated to deceive members of the trade and the general public, are likely to cause and actually are causing confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of the Mitchell Group's products by their use of the IBE Marks and Trade Dress.

69. The natural, probable, and foreseeable consequences of the Mitchell Group's wrongful conduct has been and will continue to be the deprivation of the exclusive rights IBE has in and to its intellectual property.

70. The Mitchell Group's wrongful acts of unauthorized use of the IBE Marks and Trade Dress have and will continue to cause IBE substantial injury including loss of customers,

dilution of its reputation, dilution of its goodwill, confusion of existing and potential customers, loss of its reputation, and diminution of the value of its intellectual property.

71. The harm these wrongful acts cause to IBE is both imminent and irreparable, and the amount of damage sustained by IBE will grow even more difficult to ascertain if these acts continue.

72. The Mitchell Group's wrongful acts also constitute an unfair and deceptive trade practice pursuant to Florida's Deceptive and Unfair Trade Practices Act, § 501.201, Fla. Stat.

73. As a result of the Mitchell Group's above described wrongful activities of unfair competition, IBE has suffered, and will continue to suffer, irreparable injury and substantial damages. The Mitchell Group has been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counter-Plaintiff, INTERNATIONAL BEAUTY EXCHANGE, INC. (previously defined as "IBE"), demands judgment against Plaintiff/Counter-Defendant, GAPARDIS HEALTH AND BEAUTY, INC. (previously defined as "the Mitchell Group") as follows:

- a. That the Court enter a preliminary and permanent injunction enjoining the Mitchell Group, its agents, representatives, servants, employees, and all those acting in concert or participation therewith, from manufacturing or causing to be manufactured, importing, advertising or promoting, distributing, selling or offering to sell their Counterfeit Goods; from infringing, counterfeiting, or diluting the IBE Marks; from using the IBE Marks and Trade Dress or any mark or trade dress similar thereto, in connection with the sale of any unauthorized goods; from using any logo, trade name, trademark, or trade dress which may be calculated to falsely advertise the products of the Mitchell Group as being sponsored by, authorized by, endorsed by, or in any way associated with IBE; from falsely representing themselves as being connected with IBE, through sponsorship or association, or engaging in any act which is likely to cause members of the trade and/or the purchasing public to believe any goods or services of the Mitchell Group are in any way endorsed by, approved by, and/or associated with IBE; from using any reproduction, counterfeit, copy, or colorable imitation of the IBE Marks in connection with the publicity, promotion, sale, or

advertising of any goods sold by the Mitchell Group, including, without limitation, cosmetics, face and body cream and powders, lip gels and lipstick, body and facial soap, skin and body lotion, shampoo, conditioner, hair relaxer, deodorant, facial masks, hair colors, rouge, mascara and perfumes, and/or any other goods; from affixing, applying, annexing, or using in connection with the sale of any goods a false description or representation, including words or other symbols tending to describe or represent the Mitchell Group's goods falsely as being those of IBE, or in any way endorsed by IBE, and from offering such goods in commerce; and from otherwise unfairly competing with IBE.

- b. That the Mitchell Group be required to account to and pay IBE for all profits and damages resulting from the Mitchell Group's infringing and counterfeiting activities and that the award to IBE be trebled, as provided for under 15 U.S.C. § 1117, or, at IBE's selection with respect to Count I, that IBE be awarded statutory damages from the Mitchell Group in the amount of one million (\$1,000,000) dollars per each counterfeited IBE Mark used and product sold, as provided by 15 U.S.C. § 1117(c)(2) of the Lanham Act.
- c. That IBE be awarded punitive damages.
- d. That IBE be awarded pre-judgment interest on its judgment.
- e. That IBE be awarded at least treble damages as well as its costs and reasonable attorney fees and investigators fees associated with bringing this action.
- f. That IBE be awarded such other and further relief as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Respectfully submitted,

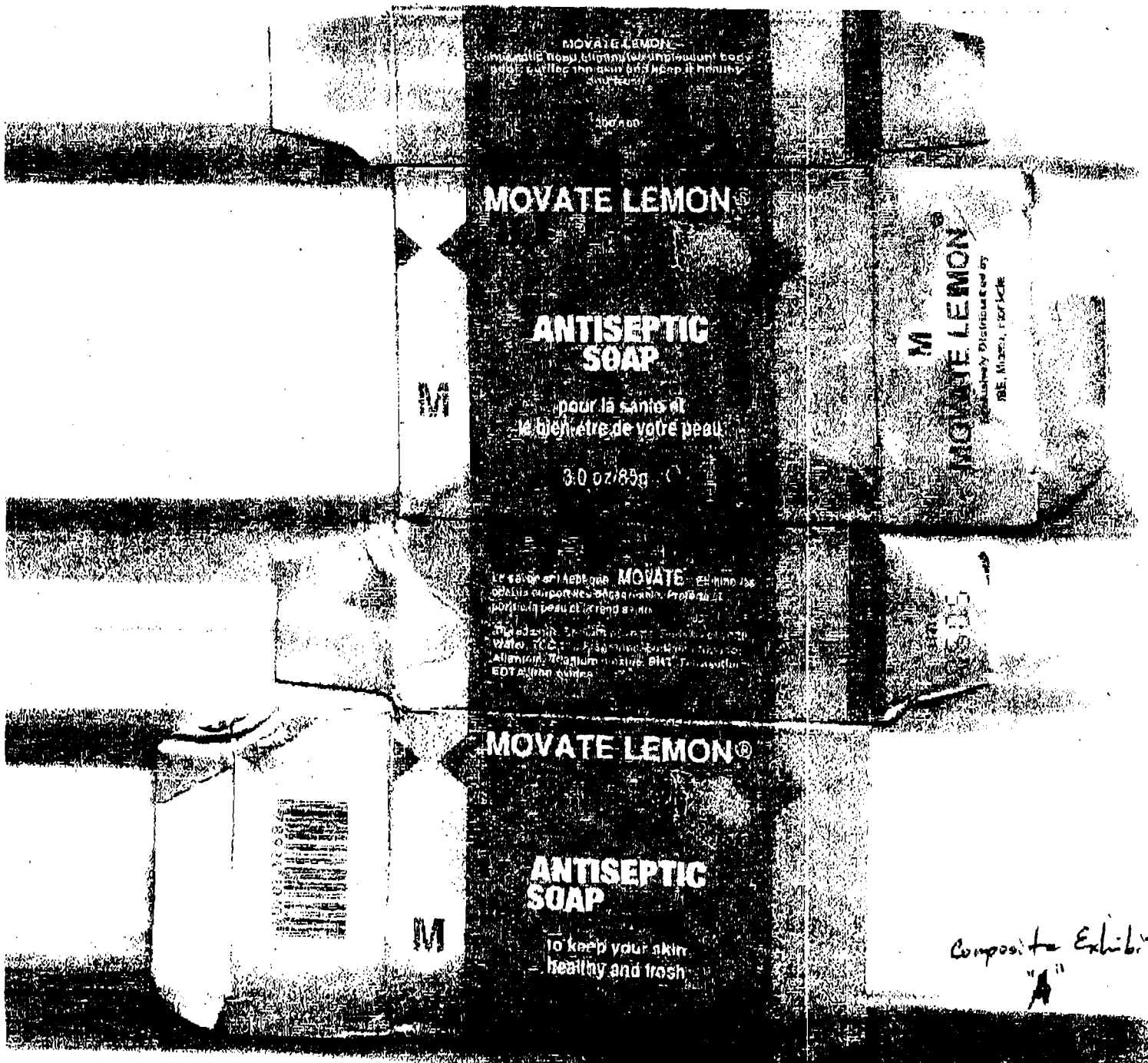
D. FERNANDO BOBADILLA, P.A.
312 Southeast 17th St.
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Telephone: (305) 933-0089
Facsimile: (305) 470-7432

By: /D. Fernando Bobadilla/
D. Fernando Bobadilla, Esq.
Fla. Bar No. 0136948

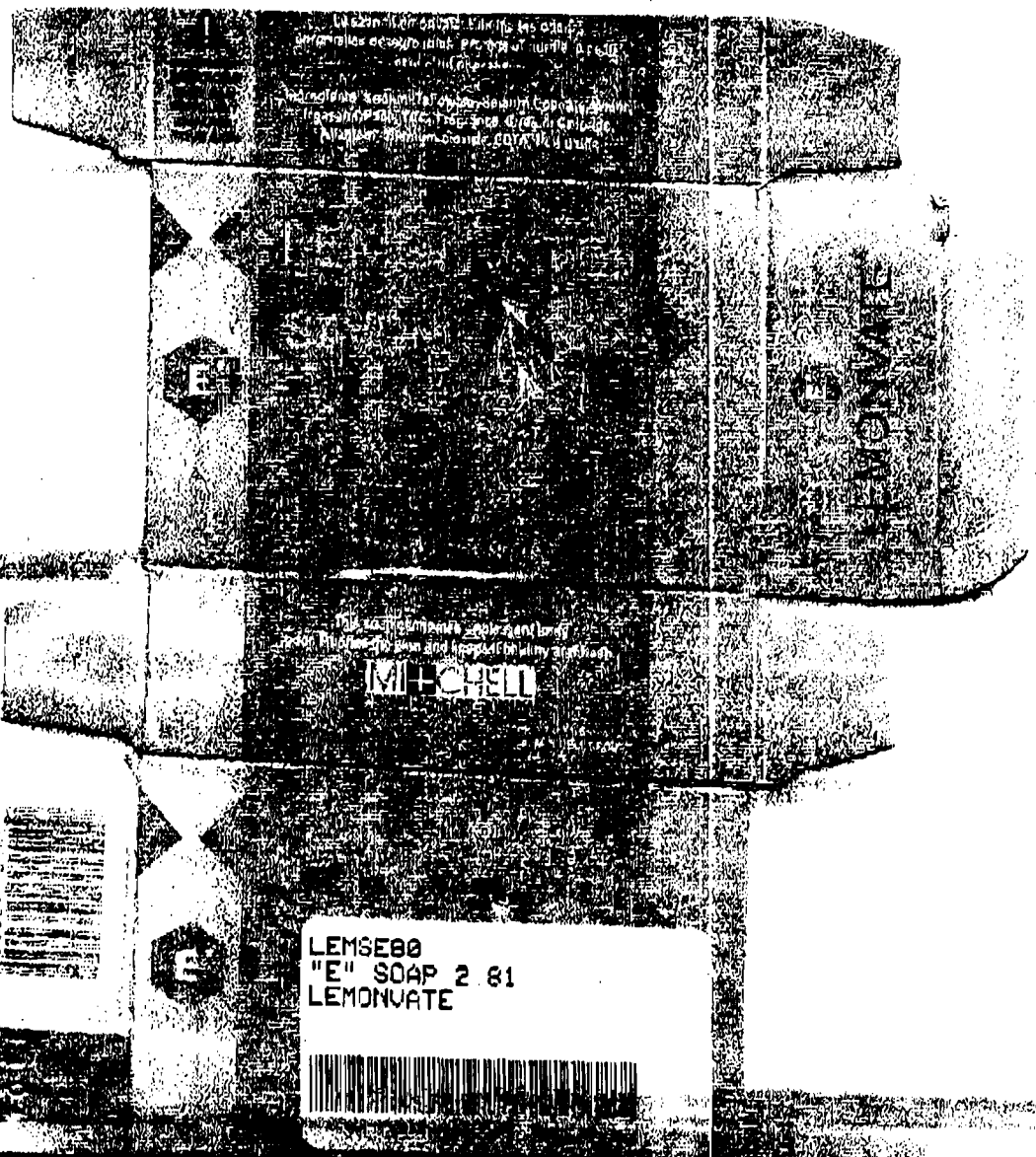
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 2d day of June 2006 to: David M. Rogero, 2600 Douglas Road, Suite 600, Coral Gables, FL, 33134.

By: /D. Fernando Bobadilla/
D. Fernando Bobadilla, Esq.



Composite Exhibit
"A"



Neovate

GEL

BEAUTY RECOUNT
\$3.99

TECHNO

PRÉCAUTION D'EMPLOI:
Ce Gel Contient du Phénol. Éviter le contact avec les yeux et les muqueuses. Appliquer uniquement sur les parties affectées. En cas d'irritation, cesser l'usage. Conserver à l'abri de la chaleur. Ne pas utiliser sur les enfants âgés de moins de 12 ans. Ne pas laisser à la portée des enfants. Conserver au frais et à l'abri de la lumière.

"USAGE EXTÉRIEUR"

1oz Poids Net / 30 g e

MODE D'EMPLOI: Utiliser une légère couche à 2 fois par jour, sur une peau nettoyée avec le savon Neovate. Appliquer le Gel jusqu'à absorption complète, à utiliser pendant 20 jours consécutifs.

Neovate
GEL



Neovate

GEL

INGRÉDIENTS:
Alumina, Carbène, EDTA, Carbone, Etil Paraben, Methyl Paraben, Propyl Paraben, Butyl Paraben, Phenoxyethanol, BHT, "100% ABSOLUTE COMPLEX".

EXTERNAL USE ONLY

1oz Net Wt. / 30 g e

Made in Belgium with imported French

TECHNOFARM ZENELAND